

UNITED STATES BANKRUPTCY COURT
_____ DISTRICT OF NEW YORK

CASE NO. _____

CHAPTER 11

Debtor(s)

MONTHLY OPERATING STATEMENT FOR
THE PERIOD _____ TO _____

DEBTOR'S ADDRESS:

MONTHLY DISBURSEMENTS: _____

DEBTOR'S ATTORNEY:

MONTHLY OPERATING PROFIT (LOSS): _____

REPORT PREPARER:

THIS OPERATING STATEMENT MUST BE SIGNED BY A REPRESENTATIVE OF
THE DEBTOR

The undersigned, having reviewed the attached report and being familiar with the Debtor's financial affairs, verifies under the penalty of perjury, that the information contained therein is complete, accurate and truthful to the best of my knowledge.

DATE: _____

SIGNATURE & TITLE

Indicate if this is an amended statement by checking here

AMENDED STATEMENT ____



U.S. Department of Justice

Office of the United States Trustee

Southern District of New York

33 Whitehall Street
21st Floor
New York, New York 10004

Phone: (212) 510-0500
Fax: (212) 668-2255

As revised January 15, 1992

To: Debtors-in-possession and Trustee

Re: Operating Guidelines and Financial Reporting
Requirements Required in All Cases under Chapter 11,
and cases with operating business under Chapters 7 & 13
of the Bankruptcy Code.

In the administration of cases commenced under Title 11, U.S.C. (the Bankruptcy Code), and in furtherance of the duties imposed on the UNITED STATES TRUSTEE by 28 U.C.S. §§586(a)(3), 586(b), trustees and debtors-in-possession (11 U.S.C. §§721, 1108, 1304) are required to comply, as of the date of the filing of a petition commencing a case under Chapter 7, 11, or 13, with the following guidelines relating to the opening and maintenance of bank accounts, the procurement and maintenance of insurance, and the filing of periodic operating reports with the UNITED STATES TRUSTEE and the Bankruptcy Court. (11 U.S.C. §704(2), (8); see, Federal Rules of Bankruptcy Procedure, 2015 and 4002, see also, Local Bankruptcy Rules of the Bankruptcy Courts.)

INTRODUCTION

Debtors in bankruptcy cases and operating trustees have a fiduciary obligations and a legal duty to account for their operations of a business. This is met substantially by:

- (1) the use of new bank accounts,
- (2) obtaining and maintaining insurance, and
- (3) filing monthly and annual reports.

The failure to comply with these duties is a general indication that the debtor is not operating properly and should either be liquidated or denied the protection of the Bankruptcy Code.

EFFECTIVE NOW

RE: OPERATING REPORTS-AMENDMENT TO PROCEDURES SET FORTH ON PAGE 3

THE ORIGINAL OPERATING REPORT SHOULD BE FILED BY THE DEBTOR DIRECTLY WITH THE CLERK'S OFFICE AND A COPY SHOULD BE SIMULTANEOUSLY PROVIDED TO THIS OFFICE AND THE CREDITORS' COMMITTEE.

BANK ACCOUNTS

A debtor-in-possession shall open new bank accounts immediately after commencing a case under Chapters 7, 11, or 13. These accounts shall include the words "Debtor-in-Possession" or the letters "D.I.P." in the title, and consist of: (a) an Operating Account to process all cost-petition receipts and disbursements from operations of the business, and (b) a Separate Tax account into which all funds (including but not limited to funds held in trust for employee's taxes) as may be collected and or payable during the pendency of the case shall be deposited.

A trustee who operates a business is also required to maintain such accounts. When the trustee supersedes a debtor-in-possession, the trustee may continue such accounts, with appropriate changes in the title of the account and signatory authority, or open new accounts properly titled.

A bank in which these accounts are maintained must be in compliance with the provision of 11 U.S.C. §345.

Each trustee or debtor-in-possession responsible for maintaining such accounts shall provide to the UNITED STATES TRUSTEE a copy of the check ("Specimen check") for each of the accounts, and a listing of the authorized signatories (not the signature card). These specimen checks and the list shall be provided to the UNITED STATES TRUSTEE not later than the first meeting of creditors, or in the case of a trustee, the first scheduled meeting of creditors following the appointment of a trustee.

Deposits to the separate tax account of withholding, payroll, sales and any other taxes, together with any necessary federal depository receipts, shall be made as follows:

1. Within two business days from the date on which salaries are paid to employees
 - a. that portion of such salaries as are required to be withheld for federal, state taxes, and for social security, and

b. the employer's portions of social security and disability and unemployment insurance; and

2. In those cases in which a debtor (or debtors business) is required to collect sales taxes such taxes must be deposited in the tax account not later than the Monday following each business week for that week's tax liability; and

3. Any other taxes which the debtor is required to collect, or for which it incurs liability in the ordinary course of the operation of its business (such as federal excise taxes, property taxes, rental taxes, etc.) must be deposited in this tax account no later Wednesday of the week following the week in which such taxes were collected or in which the liability was incurred.

The debtor-in-possession or operating trustee shall within one calendar week after making any remittances to a depository on account of federal taxes, furnish the District Director of Internal Revenue Service (ATTN: Special Procedures Unit) with evidence, on forms provided by the District Director (IRS Form 6123, or equivalent) that such deposits have been made on behalf of the debtor, (the Form 6123 is not a substitute for a deposit slip or card, but should be submitted for verification to the Special Procedures Unit with the appropriate form (IRS Forms 940, 941, etc.), to verify that deposits have been made to the Government (not the tax account) to meet the tax obligations for the period; and monthly serve copies of such forms with the operating report on the UNITED STATES TRUSTEE.

INSURANCE

Within one week subsequent to the entry of the order for relief, the debtor-in-possession or trustee shall provide the UNITED STATES TRUSTEE with proof that the debtor has all appropriate insurance coverage. This proof may be in the form of a copy binder or current policy. The insurance coverage should include such items as loss due to fire, theft, business interruption, workmen's compensation, liability, etc.

MONTHLY FINANCIAL STATEMENTS

All debtor-in-possession, Chapter 11 trustees, and Chapter 7 trustees who are authorized to operate businesses are required to file verified, periodic financial statements/operating reports (described below) in duplicate with the UNITED STATES TRUSTEE, with a copy to the creditors' committee (if one has been appointed). ^{1/} The original provided to the UNITED STATES TRUSTEE will be forwarded to the Clerk of the Bankruptcy Court for filing.

Reports shall be filed not later than the 15th calendar day following the end of each calendar month, covering all transactions, on an accrual basis, by the debtor-in-possession (or the trustee) for the calendar month immediately preceding the due date. The first report shall include all transactions for the first full calendar month and the portion of the preceding month from the commencement of the case.

Monthly Reports shall include:

- a. A Cover Sheet, showing: the name of the debtor, the case number, the preparer, the debtor's attorney, and the verification properly dated and signed by the debtor.
- b. An Operating Report, consisting of a Statement of Operations and a Balance Sheet prepared in accordance with generally accepted accounting principles (GAAP).

The Statement of Operations shall be on the accrual basis and include the debtor's revenues, costs of goods sold, and operating/administrative expenses distinguished from reorganization items, arriving at a profit or loss.

The Balance Sheet shall include total assets (such as cash, accounts receivable, and plant, property & equipment), total liabilities, and total equity or negative equity. There shall be a description of accounts payable^{2/} and accounts receivable, where appropriate. Liabilities shall

^{1/} These reports must be filed whether or not the business is operating.

^{2/} This applies to third-party transactions such as trade payables and notes payable. Transactions with related parties, inter-company transfers etc., should be segregated. Any

be classified as those which are pre-petition, and those which are post-petition. Pre-petition liabilities should distinguish those transactions and events that are directly associated with the reorganization from the ongoing operations of the business.

c. A Statement of Cash Flow, identifying those operating activities or items directly producing cash, and further identifying operating cash flow from reorganization items. Examples of reorganization activities include interest from cash accumulated because of the bankruptcy proceeding.

d. A schedule of Federal, State, and Local Taxes Collected, Received, Due or Withheld. For each month this schedule should provide the following information:

- a. All wages and salaries paid (GROSS) or incurred.
- b. The amount of payroll taxes withheld.
- c. The amount of employer payroll tax contributions incurred.
- d. The gross taxable sales.
- e. Sales taxes collected.
- f. Property taxes.
- g. Any other taxes.
- h. The date and amount paid over to each taxing agency for taxes identified in items 2, 3 and 5 above.

e. A statement by the debtor that all insurance policies are fully paid for the current period, and specifically that amounts for workers compensation and disability insurance have been paid.

DISCLOSURE REQUIREMENTS

Interim financial reports (monthly and annual operating reports) shall comply with at least the minimum disclosure requirements established in AICPA Accounting Principles Board Opinion #28, FASB 95 regarding Statements of Cash Flow, and AICPA Statement of Position 90-7, Financial Reporting by

items which are disputed, or which have financially significant terms, conditions or covenants should be explained by appropriate disclosure. Pre-petition liabilities should also be segregated for presentation and disclosure purposes during the pendency of the proceeding. Any transaction affecting the balance of the pre-petition receivable should be fully explained by appropriate disclosure.

Entities in Reorganization under the Bankruptcy Code. A mere compilation report or a “review”, without adequate disclosure, does not comply with these Operating Report requirements. If the Operating Report is prepared by a party other than the debtor, or its principals or employees, there should also be included an opinion letter or report specifying audit or review standards employed, and any deviations from the consistent application of GAAP.

Where significant, there should be disclosure of the particular accounting principles relied upon, subsequent events that affect the financial condition as presented in the report, and any material changes in valuation.

ANNUAL FINANCIAL STATEMENTS

All debtors-in-possession, and any trustee who operates a business are required to file in duplicate with the UNITED STATES TRUSTEE, with a copy to the creditors’ committee, if any, no later than 90 days after the close of the debtor’s fiscal year, or each taxable year (if a short tax year election is made pursuant to Internal Revenue Code §1398(d)(2) the following annual financial statements prepared, to the extent possible, in accordance with generally accepted accounting principles (including GAAP disclosure requirements):

- a. A Balance Sheet with comparative figures for the prior fiscal year.
- b. A Profit and Loss Statement with comparative figures for the prior fiscal year.
- c. A statement of Cash Flow with comparative figures for prior fiscal year.
- d. A copy of the 10K for the period, for a publicly-held corporation.

The filing of an annual financial statement does not relieve a debtor-in-possession or a trustee from the requirement of filing monthly reports.

WAIVER OR MODIFICATION OF REPORTING REQUIREMENTS

The reporting requirements of the UNITED STATES TRUSTEE may be waived or modified only after a request in writing demonstrating both sufficient cause for the requested action, and specifying what alternative is to be provided in the form and detail of reporting for the estate. No waiver or modification

shall be effective unless in writing and signed by the UNITED STATES TRUSTEE or designee. A copy of any communication sent to this Office concerning compliance with the financial reporting requirements should be served on the creditors' committee, if any. Questions regarding these guidelines should be addressed to the staff attorney handling the case.

We recognize that each debtor-in-possession is different and that the ability of a debtor-in-possession to comply with the monthly financial reporting also may vary. Thus, counsel should feel free to advise the UNITED STATES TRUSTEE as to the circumstances making it burdensome or otherwise difficult to provide the requested information and to indicate, for example, the type of financial statements the debtor-in-possession can provide, the form of such reports, and the timing. While the UNITED STATES TRUSTEE is willing to consider, on the basis of the facts of each case, any reasonable alternative that the debtor-in-possession may wish to propose, this Office requires at least as much information as the debtor-in-possession provides to a creditors committee.

CONCLUSION

While in bankruptcy, the operation of a debtor's business requires new bank accounts properly titled, insurance coverage, and GAAP financial reporting that permits monitoring and supervision of the case. The appendix provides an illustrative financial statement, with an appropriate disclosure note. The form of presentation will vary from one debtor to another, depending on the nature of the business, and the illustration should not be taken as official form. These Operating Guidelines and Financial Reporting Requirements set forward the minimal standards for all debtor-in-possession and trustees as fiduciaries under the Bankruptcy Code.

APPENDIX A

ILLUSTRATIVE FINANCIAL STATEMENTS AND NOTES TO FINANCIAL STATEMENTS FOR AN ENTITY OPERATING UNDER CHAPTER 11

And XYZ Company is a manufacturing concern headquartered in Tennessee, with a fiscal year ending on December 31. On January 10, 19X1, XYZ filed a petition for relief under Chapter 11 of the federal bankruptcy laws. The following financial statements (balance sheet and statements of operations and cash flows) are presented as of and for the year ended December 31.

XYZ Company
(Debtor-in-Possession)
Balance Sheet
December 31, 19X1

<u>Assets</u>	<u>(000's)</u>
Current Assets	
Cash	\$ 110
Accounts receivable, net	300
Inventory	250
Other current assets	<u>30</u>
Total current assets	690
Property, plant and equipment, net	430
Goodwill	<u>210</u>
Total Assets	\$1,330
	= = = =

Liabilities and Shareholders Deficit (000s)

Liabilities Not Subject to Compromise

Current Liabilities

Short-term borrowings	\$ 25
Accounts payable-trade	200
Other liabilities	<u>50</u>
Total current liabilities	275

Liabilities Subject to Compromise 1,100(a)

Total liabilities 1,375

Shareholders' (deficit):

Preferred stock	325
Common stock	75
Retained earnings (deficit)	<u>(445)</u>
	<u>(45)</u>

Total Liabilities & Shareholders' (Deficit) \$1,330

(a) Liabilities subject to compromise consist of the following:

Secured debt, 14%, secured by first mortgage on building	\$ 300,000(b)
Priority tax claims	50,000
Senior subordinated secured notes, 15%	275,000
Trade and other miscellaneous claims	225,000
Subordinated debentures, 17%	<u>250,000</u>
	\$ 1,100,000
	= = = = =

(b) The secured debt in this case should be considered, due to various factors, subject to compromise.

The accompanying notes are an integral part of the financial statements.

XYZ Company
(Debtor-in-Possession)
Statement of Operations
For the year Ended December 31, 19X1
(000s)

Revenues:	<u>19X1</u>
Sales	\$ 2,400
Cost and expenses:	
Cost of goods sold	1,800
Selling, operating and administrative	550
Interest (contractual interest \$5)	<u>3</u>
	<u>2,353</u>
Earnings before reorganization items and income tax benefit	<u>47</u>
Reorganization items:	
Loss on disposal of facility	(60)
Professional fees	(50)
Provision for rejected executory contracts	(10)
Interest earned on accumulated cash resulting from Chapter 11 proceeding	<u>1</u>
	<u>(119)</u>
Loss before income tax benefit and discontinued operations	(72)
Income tax benefit	<u>10</u>
Loss before discontinued operations	62
Discounted operations:	
Loss from operations of discounted products segment	<u>(56)</u>
Net loss	<u>\$ (118)</u>
Loss per common share:	
Loss before discounted operations	\$ (.62)
Discounted operations	<u>(.56)</u>
Net loss	\$ (1.18)
	= = = = =

The accompanying note are an integral part of the financial statements.

XYZ Company
(Debtor-in-Possession)
Statement on Cash Flows
For the Year Ended December 31, 19X1

Increase in Cash and Cash Equivalents (000s)		19X1
Cash flows from operating activities:		
Cash received from customers	\$ 2,220	
Cash paid to suppliers and employees	(2,070)	
Interest paid		<u>(3)</u>
Net cash provided		
reorganization items		<u>147</u>
Operating cash flows reorganization items:		
Interest received on cash accumulated because		
of the Chapter 11 proceeding		1
Professional Fees paid for services		
rendered in connection with the Chapter 11 proceeding	<u>(50)</u>	
Net cash used by reorganization items	<u>(49)</u>	
Net cash provided by operating activities		<u>98</u>
Cash flows from investing activities:		
Capital expenditures		(5)
Proceeds from sale of facility due to		
Chapter 11 proceeding		<u>40</u>
Net cash provided by investing activities		<u>35</u>
Cash flows used by financing activities:		
Net borrowings under short-term credit facility		
(post petition)		<u>25</u>
Repayment of cash overdraft		(45)
Principal payments on pre-petition debt authorized by court	<u>(3)</u>	
Net cash provided by financing activities	<u>(23)</u>	
Net increase in cash and cash equivalents		110
Cash and cash equivalents at beginning of year		<u></u>
Cash and cash equivalents at end of year		\$ 110
		=====
Reconciliation of net loss to net cash provided		
by operating activities		
Net loss	\$ (118)	
Adjustments to reconcile net loss to net cash provided		
by operating activities		
Depreciation		20
Loss on disposal of facility	60	
Provision for rejected executory contracts	10	
Loss on discontinued operations		56
Increase in post-petition payables and other liabilities		250
Increase in accounts receivable		<u>(180)</u>
Net cash provided by operating activities	\$ 98	
		=====

The accompanying notes are an integral part of the financial statements.

XYZ Company Notes to Financial Statements
December 31, 19X1

Note X—Petition for Relief Under Chapter 11

On January 10, 19X1, XYZ Company (the “Debtor”) filed petitions for relief Under Chapter 11 of the federal bankruptcy laws in the United States Bankruptcy Court for the Western District of Tennessee. Under Chapter 11, certain claims against the Debtor in existence prior to the filing of the petitions for relief under the federal bankruptcy laws are stayed while the Debtor continues business operations as Debtor-in-possession. These claims are reflected in the December 31, 19X1, balance sheet as “liabilities subject to compromise.” Additional claims (liabilities subject to compromise) may arise subsequent to the filing date resulting from rejection of executory contracts, including leases, and from the determination by the court (or agreed to by parties in interest) of allowed claims for contingencies and other disputed amounts. Claims secured against the Debtor’s assets (“secured Claims”) also are stayed, although the holders of such claims have the right to move the court for relief from the stay. Secured claims are secured primarily by liens on the Debtor’s property, plant, and equipment.

The Debtor received approval from the Bankruptcy Court to pay or otherwise honor certain of its pre-petition obligations, including employee wages and product warranties. The Debtor has determined that scheduled payments on its pre-petition debt obligations. Contractual interest on those obligations amounts to \$5,000, which is \$2,000 in excess of reported interest expense therefore, the debtor has discontinued accruing interest on these obligations. Refer to note XX {see appendix B, note X} for a discussion of the credit arrangements entered into subsequent to the Chapter 11 filings.

APPENDIX B

FINANCIAL REPORTING REQUIREMENTS FOR INDIVIDUAL CHAPTER 11 DEBTORS

The following section of the Operating Guidelines applies to persons filing individually or jointly for relief under Chapter 11 of Title 11 of the United States Code. Financial reporting requirements for these cases must vary from those of corporate or partnership debtors which operated businesses or property. As the individual Chapter 11 debtor is a fiduciary to the estate, compliance with these provisions will be strictly enforced.

Section 541(a) of the Bankruptcy Code defines the scope of property of the estate. Generally, this includes all legal or equitable interests of the debtor in property as of the commencement of the case. See 11 U.S.C. §541(a)(1). Additionally, it includes any funds, proceeds, rents or profits generated from the assets of the estates. See 11 U.S.C. §541(a)(6). For example, rents from a property owned by the debtor are assets of the estate. Similarly, dividends or capital gains from stock or bond portfolios are property of the estate.

However, the Bankruptcy Code excludes certain assets from property of estate in personal Chapter 11 cases. Most importantly, post-petition earnings derived from personal services rendered post-petition are not property of the estate. Moreover, the debtor may exempt or exclude certain personal property or property held in trust or pensions may. See 11 U.S.C. §522, 541(c)(2).

Debtors must properly categorize expenses as well as income. Certain expenses qualify as post-petition administrative expenses of the estate under section 503(b)(1) of the Code such as maintenance of real property or other assets and secured debt payments on residential rental expenses, food or educational expenses are not administrative expenses and may not ordinarily be paid from estate assets or revenue.

For these reasons, the United States Trustee requires the filing of a bifurcated accrual operating report that appropriately distinguishes these categories of income and expenses. The report must indicate the total income of the individual Chapter 11 debtor, then provide a breakdown of the sources of the income. Furthermore, the reports must clearly distinguish estate expenses from personal expenses.

It is the position of the Office of the United States Trustee that an individual Chapter 11 debtor may not use income derived from estate assets to pay personal expenses or otherwise commingle these funds. Furthermore, it is also the position earnings is critical to the overall supervision and monitoring of personal Chapter 11 cases.

Beyond this, each individual must prepare a cover sheet for this report with the full caption of the case, the period covered by the report and a “Verification” signed by the debtor(s), which should read as follows:

I have read and reviewed the information contained in the report herein and under penalty of perjury I hereby affirm that this information is true and accurate to the best of my knowledge.

/s/
Debtor’s signature

The United States Trustee has attached a sample operating report to these Guidelines as Appendix B-1. Please note that the mandatory cover sheet is not included in this sample. All operating reports for individual Chapter 11 should substantially conform to this format.

APPENDIX B-1

John P. Debtor
Monthly Financial Report
Period Ending _____ 3X, 199Y

PART A

TOTAL REVENUE _____

Income from Estate Assets _____
(e.g., rents, dividends, asset
proceeds, sales of estate
property – – list each source
separately)

Post-Petition Earnings _____
(e.g., salaries, certain com-
missions, personal loans,
list each source separately)

TOTAL ESTATE EXPENSES: _____

Cost of goods sold _____
Selling, operating and
administrative exp. _____
(includes maintenance of assets)
Interest and secured debt payments due
(Itemize and describe) _____

EARNINGS BEFORE REORGANIZATION ITEMS: _____

Reorganization items:
Professional fees _____
Other reorg. items (please list) _____

NET INCOME TO ESTATE: _____

PART B

POST-PETITION EARNINGS:

PERSONAL EXPENSES:

Food, Clothing, Hygiene

Rental Expenses

Entertainment

Credit Card Interest

Transportation

Alimony, Child Support

Miscellaneous (please itemize)

NET PERSONAL INCOME:

PART C

D.I.P. Account balance at end of period

(Specify institution, branch location
and account number)

(Attach copy of most recent statement)

All other Account Balances (Itemize)

(Specify institution, branch location,
type of account and account number)

(Attach a copy of most recent statement
for each account)